

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

PAUL YANUZZI BUILDERS, LLC : CIVIL ACTION
d/b/a DM BARCLAY BUILDERS :
 :
v. :
 :
MUSIC MOUNTAIN ASSOCIATES, LLC and : NO. 02-CV-7438
OXFORD COMMUNICATIONS, INC. and :
JOHN MARTORANA :

MEMORANDUM AND ORDER

Norma L. Shapiro, S.J.

February 28, 2003

This case arises out of a dispute over a construction contract between Yanuzzi Builders and Music Mountain Associates. In their answer, the defendants raised lack of personal jurisdiction as an affirmative defense. Defendants' memorandum of law in support of their defense (paper no. 14) is deemed a motion to dismiss for lack of personal jurisdiction. Instead of dismissing the action, the court transfers it pursuant to Fed. R. Civ. P. 1404(a) to the District of New Jersey where it might have been brought.

I. Background:

Defendants Music Mountain Associates ("MMA") and Oxford Communications are involved in the conversion of a former restaurant in Lambertville, New Jersey to office space. Plaintiff, Paul Yannuzzi Builders, a company engaged in the

business of commercial and residential construction, submitted a bid on this project on August 24, 2001. Plaintiff alleges that despite defendants' assurances that it had been awarded the entire contract, defendants insisted that the demolition portion of the contract be signed and performed separately. Plaintiff further alleges that without its knowledge, defendants sought additional bids for the remainder of the contract and ultimately awarded it to another company. Plaintiff seeks damages for breach of contract (Count I), contractual bad faith (Count II), tortious interference with contract (Count III) and unfair competition (Count IV).

II. Discussion:

Pennsylvania's long arm statute provides that its reach is coextensive with the limits of the Constitution. 42 Pa. Cons. Stat. Ann. § 5322(b). The statute provides for two types of personal jurisdiction: general and specific. There is general jurisdiction if the defendant has continuous and systematic contacts with the forum state. See Helicopteros Nacionales de Colombia v. Hall, 466 U.S. 408, 414 n.9 (1984). There is specific jurisdiction if the events giving rise to the action are related to the defendant's contact with the forum state, and the defendant's activities with the forum state are such that it should "reasonably anticipate being haled into court there." Id. For specific jurisdiction plaintiff must show: (1) defendant has

sufficient "minimum contacts" with the forum state; i.e., the defendant has "purposely directed" its activities toward the state; and (2) exercising jurisdiction over the defendant complies with "traditional notions of fair play and substantial justice." Id.

Defendants concede that Oxford Communications, Inc. has sufficient contacts with Pennsylvania for the exercise of general jurisdiction, but contend the contacts of MMA and Mr. Martorana are insufficient. MMA is incorporated in New Jersey, does not own any property in Pennsylvania and does not do any business in Pennsylvania. Mr. Martorana is a resident of New Jersey, his principal place of business is in New Jersey, and he does not own any property in Pennsylvania. Therefore, neither of these defendants has continuous or systematic contacts with Pennsylvania sufficient for the exercise of general jurisdiction.

MMA and Martorana do not meet the "minimum contacts" test for specific jurisdiction; neither could foresee being haled into court in Pennsylvania. The contract at issue was signed in New Jersey and concerns a New Jersey business. The contacts plaintiff describes in its brief are tenuous at best. All the witnesses except the plaintiff are not in Pennsylvania, the "traditional notions of fair play and substantial justice" suggest that jurisdiction is lacking.

The plaintiff argues that the defendants consented to personal jurisdiction by litigating on the merits: they

participated in discovery and demanded replies within 30 days. Defendants can waive lack of personal jurisdiction by engaging in litigation, but the cases plaintiff cites for this proposition involve much more aggressive and long-term litigation than is present here.

In Continental Bank v. Meyer, 10 F.3d 1293 (7th Cir. 1993), defendants had waived lack of personal jurisdiction by participating in litigation for over two-and-a-half years without contesting personal jurisdiction. Defendants here only instituted discovery to meet the court's discovery deadline if the action is not dismissed. In In re Texas Eastern Transmission Corp., 15 F.3d 1230 (3rd Cir. 1994), counterclaim defendants consented to personal jurisdiction by failing to move to dismiss before litigating motions for summary judgment on other grounds. Here the defendants contested personal jurisdiction in their responsive pleading and have not filed any motion or demonstrated other intent to submit to the jurisdiction of this court beyond the minimal action of requesting discovery. Plaintiff's argument is unpersuasive.

Plaintiff alleges that Oxford Communications and MMA are not separate and distinct entities so that personal jurisdiction over MMA can be based on Oxford's contacts with Pennsylvania. It is unclear whether Oxford and MMA are separate entities, but it is unnecessary to determine this. Whether or not there is personal jurisdiction, a district court may, at its discretion, transfer

an action to another district or division where it might have been brought for the convenience of the parties and witnesses and in the interest of justice. 28 U.S.C. § 1404(a); Goldlawr Inc. v. Heiman, 369 U.S. 463 (1962). This action clearly belongs in New Jersey, rather than Pennsylvania. The defendants are New Jersey companies, the contract was signed in New Jersey, the work was to be done on property in New Jersey and almost all of the witnesses are in New Jersey. The fact that personal jurisdiction in Pennsylvania is questionable is also a reason for transferring the action to New Jersey. Therefore, this court will transfer the action pursuant to 28 U.S.C. § 1404(a) to the District of New Jersey where it might have been brought.

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ORDER

AND NOW, this ____ day of February, 2003, for the reasons stated in the foregoing memorandum, it is **ORDERED** that:

1. Defendant's Motion to Dismiss for lack of personal jurisdiction (paper no. 14) is **DENIED**.

2. For the convenience of the parties and in the interest of justice, this case is transferred to the United States District Court for the District of New Jersey where it might have been brought, **FORTHWITH**.

Norma L. Shapiro, S.J.